

BELLSOUTH's ANTICOMPETITIVE RECIP. COMP. GAMESMANSHIP (cont'd)

- **THE MTA OFFERING (cont'd)**
 - MTA Amendment Has Not Been Implemented by Intermedia
 - Accepted as a conditional Offering, if necessary -- was never implemented
 - By time MTA was signed, exhaust apparently was fixed
 - Appears “crisis” was manufactured to force Intermedia to take MTA
 - Amendment Stands as Evidence of Bad Faith & Likely Fraud

BELLSOUTH's ANTICOMPETITIVE RECIP. COMP. GAMESMANSHIP (cont'd)

- **THE MTA OFFERING (cont'd)**
 - Violates §251(c)(1) of Act & §51.301(b)(5) of FCC Rules Requiring Good Faith Negotiation
 - Compliance required as precondition to 271 relief
 - May constitute common law fraud

BELLSOUTH's ANTICOMPETITIVE RECIP. COMP. GAMESMANSHIP (cont'd)

- THIS BAD FAITH & HARASSING
LITIGATION MUST BE CONSIDERED
WHEN BELLSOUTH SEEKS 271 RELIEF
 - The *Louisiana II* Order Already Makes Clear
ILECs Must Be Current On Their Recip. Comp.
Obligations To Obtain Relief
 - Must Include Consideration of Meritless
Litigation Impact

RELIEF REQUESTED

- **CONSIDER BELLSOUTH's BEHAVIOR
IN REVIEWING ANY APPLICATION
FOR 271 RELIEF**
 - Fails to Comply With Good Faith Negotiations
Obligations Under Act §251(c)(1) & FCC Rule
§51.301(B)(5)
 - Fails To Meet The Antitrust Review Mandated
By §271

RELIEF REQUESTED (cont'd)

- **ACTION IN CC DOCKET NO. 96-262**
 - Immediately Upon Affirmation of FCC Position By D.C. Circuit, Issue Order Adopting FCC's Tentative Conclusion
 - ISP-bound dialup traffic is interstate
 - But access charge exemption remains
 - Treated as local traffic for compensation purposes

RELIEF REQUESTED (cont'd)

- **ISSUE ORDER IN DOCKET No. 96-262** (cont'd)
 - States May Set New Compensation, But:
 - Must be monetary -- cannot be bill & keep
 - All traffic with long hang times must be treated the same
 - Help desk, ticket reservation, insurance claims
 - ILEC must demonstrate cost differences justify different rate structure
 - Must allow CLECs to justify different rates or rate structures, at their option

RELIEF REQUESTED (cont'd)

- **ISSUE ORDER IN DOCKET No. 96-262** (cont'd)
 - States May Set New Compensation, But:
 - Unless & until states complete rate case & set new, Telric-based rates, FCC must prescribe state-set rate for local traffic as the rate that applies to ISP-bound calls
 - Necessary to provide continuity in case of lengthy state proceedings
 - Needed to avoid harassing litigation that BellSouth has demonstrated

RELIEF REQUESTED (cont'd)

- IN THE UNLIKELY CASE THAT THE D.C. CIRCUIT OVERTURNS FCC:
 - Immediately Issue Order Declaring That ISP-Bound Dialup Traffic Is Local Traffic As Defined By The Communications Act & The FCC's Rules
 - Clarify That Reciprocal Compensation Applies